

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN THE STRUGGLE PRODUCTIONS LLC,	:	
	:	
Plaintiff,	:	
	:	24-CV-2782 (VEC)
-against-	:	
	:	<u>ORDER</u>
JULIUS CEAZAR HERRARA; P/K/A	:	
SUIGENERIS; DEVILGEAR RECORDS LLC;	:	
AND, EMPIRE DISTRIBUTION, INC.,	:	
	:	
Defendants.	:	
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VALERIE CAPRONI, United States District Judge:		

WHEREAS on July 17, 2024, the Court issued an order dismissing this action with prejudice (Dkt. 30) following the parties' July 16, 2024, joint letter informing the Court of their agreement to settle the case and to dismiss the action (Dkt. 29); and

WHEREAS no party has applied to reopen the case; and

WHEREAS on August 12, 2024, Plaintiff filed a proposed certificate of default against Defendants Julius Ceazar Herrera and Devilgear Records LLC (Dkt. 31) and supporting declaration (Dkt. 32); and

WHEREAS the 21-day deadline for a defendant to serve an answer to a complaint is measured from the time the defendant is served with the summons and complaint, *see* Fed. R. Civ. P. 12(a)(1)(A)(i); and

WHEREAS the Court granted Plaintiff's application to effectuate "nail and mail" service on Mr. Herrera pursuant to Cal. Code Civ. P. § 415.20(b) and on Devilgear Records LLC pursuant to Cal. Code Civ. P. § 415.20(a) (Dkt. 22); and

WHEREAS Cal. Code Civ. P. § 415.20(a) provides that “[i]n lieu of personal delivery of a copy of the summons and complaint to the person to be served . . . , a summons may be served by leaving a copy of the summons and complaint during usual office hours in his or her office or, if no physical address is known, at his or her usual mailing address, other than a United States Postal Service post office box, with the person who is apparently in charge thereof, *and* by thereafter mailing a copy of the summons and complaint by first-class mail” (emphasis added) and Cal. Code Civ. P. § 415.20(b) provides that where “a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served . . . a summons may be served by leaving a copy of the summons and complaint at the person’s dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, *and* by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left” (emphasis added); and

WHEREAS Plaintiff failed to effectuate service on Mr. Herrera and Devilgear Records LLC because Plaintiff served Mr. Herrera and Devilgear Records LLC by sending a copy of the summons and complaint to Mr. Herrera via Federal Express (*see* Dkt. 23), rather than in the manner required by Cal. Code Civ. P. § 415.20(a)–(b);

IT IS HEREBY ORDERED that default judgment against Mr. Herrera and Devilgear Records LLC is unavailable because this action has already been dismissed with prejudice, and because Mr. Herrera and Devilgear Records LLC have not been properly served and therefore

would not be in default if the action were reopened. The Clerk of the Court is respectfully directed not to issue the proposed certificate of default at Dkt. 31.

SO ORDERED.

Date: August 13, 2024
New York, NY



VALERIE CAPRONI
United States District Judge